

(10)

Office - Supreme Court, U. S.

FILED

JUL 19 1943

CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 181

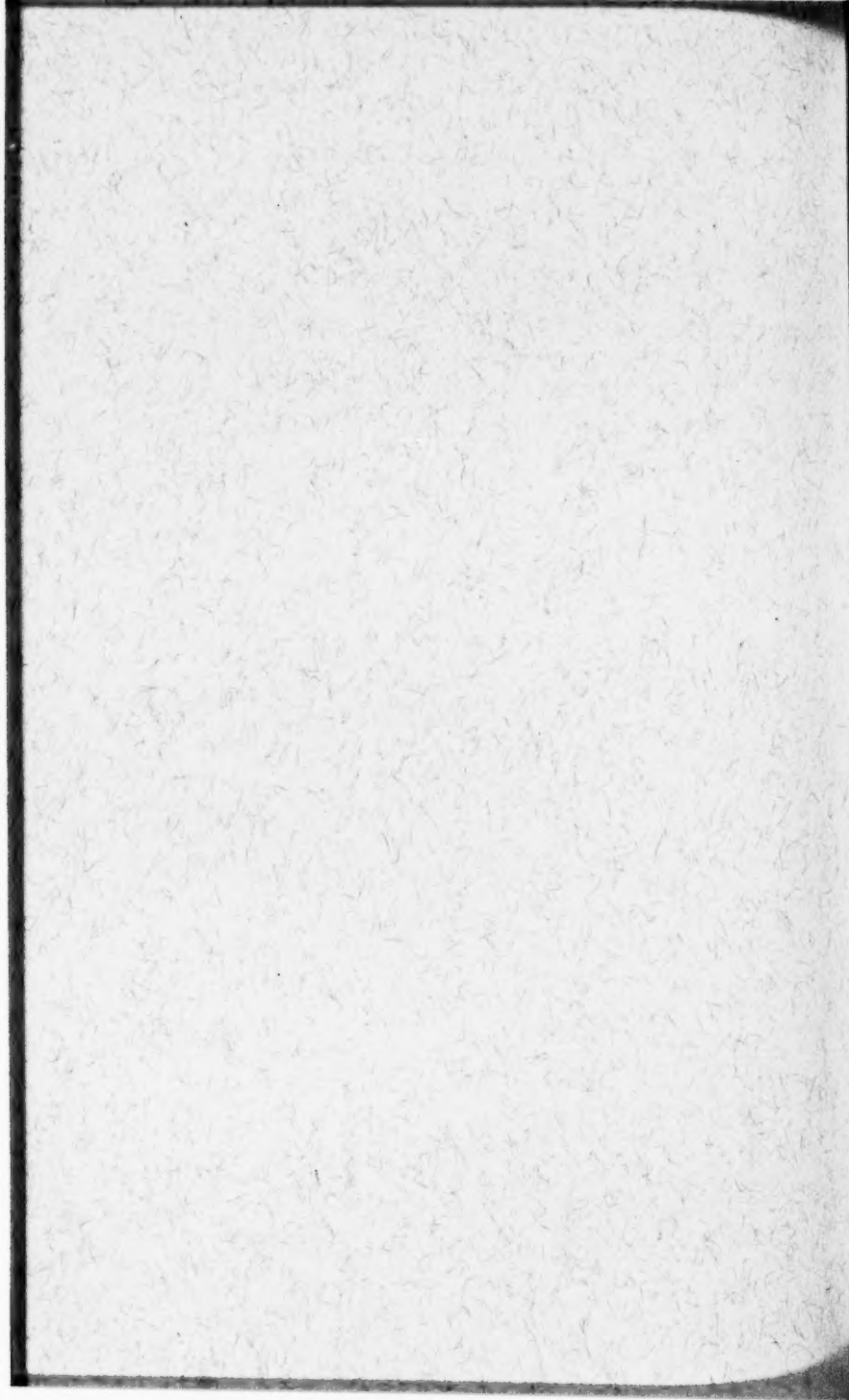
CARL LIPPARD AND PAUL LIPPARD,
Petitioners,

vs.

THE STATE OF NORTH CAROLINA.

**PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF NORTH
CAROLINA AND BRIEF IN SUPPORT THEREOF.**

JOHN M. ROBINSON,
G. T. CARSWELL,
Counsel for Petitioners.



INDEX.

SUBJECT INDEX.

	Page
Petition for writ of certiorari	1
Part I. Summary and short statement of the matters involved	1
Part II. Jurisdictional statement	3
Part III. Questions involved	6
Prayer for writ	6
Brief in support of petition	9
I. Opinion of the court below	9
II. Jurisdiction	9
III. Statement of case	10
IV. Argument	10
Question 1	10
Question 2	11
Question 3	13
Question 4	15
Conclusion	16

TABLE OF CASES CITED.

<i>Buchhalter v. People of the State of New York</i> , 87 U. S. Supreme Court Opinions 1088	4, 15
<i>Krench v. United States</i> , 42 F. (2d) 354	11
<i>McNabb, et als. v. United States of America</i> , 87 U. S. Supreme Court Reports, 579	14
<i>State v. Combs</i> , 200 N. C. 671	10
<i>State v. Donnell</i> , 202 N. C. 782	10
<i>United States v. One Buick Coach Automobile</i> , 34 F. (2d) 318	10

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 181

CARL LIPPARD AND PAUL LIPPARD,
Petitioners,

vs.

THE STATE OF NORTH CAROLINA.

**PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF NORTH
CAROLINA.**

To the Honorable the Supreme Court of the United States:

Your petitioners, Carl Lippard and Paul Lippard, pray the Court to review on writ of certiorari a decision of the Supreme Court of the State of North Carolina in the case of *State of North Carolina v. Carl Lippard and Paul Lippard*, rendered on the 19th day of May, 1943, which written opinion of that Court was filed on the same date.

Page references which are hereinafter made refer to the record as printed in the court below.

**Part I. Summary and Short Statement of the Matters
Involved.**

Carl Lippard and Paul Lippard, petitioners, were indicted with others on the 22nd day of March, 1942, when a quantity

of Federal tax paid whiskey was found on a truck at the home of Carl Lippard. The whiskey was seized by the Rural Police of Mecklenburg County and turned over to the County Auditor, and the truck was taken possession of by Mecklenburg County and the whiskey was sold by Mecklenburg County to the Cumberland County ABC Stores in Fayetteville, North Carolina, for \$4,850.00 (Record 39, testimony of L. Z. Hicks, who was assistant to the County Auditor, G. D. Bradshaw), and the truck was sold for \$1,450.00 (R. 40), all of which money was received by the Treasurer of Mecklenburg County, North Carolina. Photostatic copy of the judgment is made a part of the record and filed with the record of petitioners, showing the sentences imposed by the presiding judge on April 13, 1942, against the petitioners upon their plea of guilty to the charge and/or charges in the warrants (it being a disputed question whether the defendants pled guilty to all the charges in the indictment or to one charge) (Court Clerk's testimony, R. 44, 45).

Again on June 22, 1942, the petitioners were indicted with others, charged with conspiracy to violate the liquor law of North Carolina as relates to Mecklenburg County (R. 2).

When the case was called for trial, the Solicitor made a judicial admission in the record (R. 8), which is as follows:

"It is admitted by the State that all charges in this case against the defendants, Carl Lippard and Paul Lippard, took place before April 22, 1942."

The conspiracy charge covered the same period of time that the warrants covered on which the petitioners had been indicted and had been tried on April 13, 1942.

There is no contention being made by the State that the petitioners had violated the North Carolina liquor law as pertains to Mecklenburg County after their first trial on April 13, 1942, and that the conspiracy charge related to the

same period of time as a matter of law that the first warrants related to charging the petitioners with a violation of the North Carolina liquor law pertaining to Mecklenburg County, to which the petitioners pled guilty and were sentenced.

The petitioners made a motion to continue the case and for it not to be tried by the presiding judge on the ground that he had expressed an opinion in the press on June 24, 1942, and on June 25, 1942, subsequent to the indictments, which quoted the Court as expressing an opinion that the petitioners, Carl Lippard and Paul Lippard, were guilty or responsible for the offenses that they stood charged with others named in the indictment (R. 11, 12, 13, 14). Also the petitioners made a plea of former jeopardy, contending that the petitioners had been tried upon warrants charging them with violation of the North Carolina liquor law as pertains to Mecklenburg County, contending that if the evidence offered upon the charge of conspiracy had been offered at the first trial, it would have been sufficient to convict the petitioners. Both motions were denied. Exceptions were taken (R. 16, 46). Trial was had as shown by the record of the petitioners, resulting in their conviction and sentence to eighteen months and six months, respectively (R. 4, 5). All other defendants were acquitted by directed verdict or verdict of the jury, except James Correll, who was permitted to pay the costs at the rate of a small amount each month.

Appeal was taken by the petitioners to the Supreme Court of the State of North Carolina, where the judgment of the trial court was upheld (R. 186-191).

Part II. Jurisdictional Statement.

The jurisdiction of this Court is invoked under the due process clause of the Fourteenth Amendment to the Constitution of the United States that safeguards the funda-

mental principles of liberty and justice to citizens of the United States. The petitioners invoked that principle in their plea, as set out in the affidavit of Carl Lippard, adopted by Paul Lippard (R. 32), as follows: "The defendant pleads for an opportunity to have a fair and impartial trial as he contends every citizen has an inherent right to under the laws and constitution of his land."

"The due process clause of the Fourteenth Amendment requires that action by a State through any of its agencies must be consistent with the fundamental principles of liberty and justice which lie at the base of our civil and political institutions which not infrequently are designated as 'the law of the land'. Where this requirement has been disregarded in a criminal trial in a State court, this Court has not hesitated to exercise its jurisdiction to enforce the constitutional guarantee."

Louis Buchalter, Petitioner, v. People of the State of New York, 87 U. S. Supreme Court Decisions, 1088.

Upon their plea of double jeopardy and their right of trial by jury, your petitioners contend that their rights to a fair and impartial trial as guaranteed by the Fourteenth Amendment to the Constitution of the United States were violated, and further that it appears from an examination of the record that the entire record leaves the person who examines it with the opinion that the conduct of the trial was grossly unfair to the petitioners, in that:

(1) they were tried for conspiracy to violate the prohibition law about which they had already pled guilty to a violation of the North Carolina liquor law (R. 17, 22);

(2) that the Court had expressed an opinion prior to the trial in a daily newspaper with a large circulation that the petitioners were the real guilty parties in the indictment (R. 14);

(3) evidencing the effect of that statement, 50% of the 161 prospective jurors expressed the opinion that the petitioners were guilty from what they had read in *THE CHARLOTTE NEWS*, in which the trial Judge had expressed the opinion prior to the trial that the petitioners were guilty (R. 31, 32);

(4) denial by the Court of the petitioners' motion for bill of particulars (R. 7);

(5) denial of the petitioners' motion to continue the case and the presiding judge not to try the case (R. 16, 25, 28, 33);

(6) allowing the State to have private prosecution after eight of the jurors had been selected and agreed upon by the State and the petitioners and with the denial to counsel for the petitioners to examine the jury concerning their connection with any organization employing the private counsel who came into the case after the case had been in progress for several days (R. 26);

(7) imprisoning the State's chief witness until he had made a statement against the petitioners and himself and allowing his testimony to be offered over the objection of the petitioners, upon which testimony the petitioners were found guilty (R. 67, 68, 69).

When the State caused the prosecuting witness, L. W. Teter, to be placed in jail until he had made a statement and then released him after he had made a statement, and then some days before the case was called for trial re-arrested him and kept him in custody until after he had testified, the provision of the Fourteenth Amendment, guaranteeing to every citizen that no State shall deprive him of his life, liberty or property without due process of law nor shall he be denied the equal protection of the law, was violated. While this witness was not indicted with the petitioners, his testimony was gotten under such circumstances that it should have been held incompetent and

excluded by the Court. The petitioners contend that there is greater danger of a confession being unworthy that has been forced out of a witness who has been wrongfully imprisoned and held secretly in prison without benefit of counsel or friends than of a confession from a defendant who has been wrongfully imprisoned and has been mistreated and forced to give evidence against himself.

Part III. Questions Presented.

1. Did the Supreme Court of North Carolina err in holding as a matter of law that there was no evidence to be submitted to the jury upon the question of the petitioners' plea of former jeopardy?

2. Did the Supreme Court of North Carolina err in holding as a matter of law that the petitioners had had a fair and impartial trial?

3. Did the Supreme Court of North Carolina err in holding that the testimony of L. W. Teter was competent in the light of the circumstances under which it was obtained?

4. Treating the record as a whole, did the Court err in holding that the trial judge did not err in not disqualifying himself by reason of his having expressed an opinion prior to the trial that the petitioners were guilty when it clearly appeared from the examination of the 161 prospective jurors that what he had put in the paper had influenced the majority of them to express the opinion that the petitioners were guilty?

WHEREFORE, because the decision and judgment of the Supreme Court of North Carolina, finding no error on the entire record in the petitioners' case, is violative of the due process clause of the Fourteenth Amendment to the Constitution which is referred to in the record of the petitioners as the fundamental law of the land, the petitioners pray that the writ of certiorari be issued to the end that

their cause may be reviewed and determined by the Supreme Court of the United States, and that upon such review that the judgment of the Supreme Court of North Carolina be reversed.

CARL LIPPARD,

PAUL LIPPARD,

Petitioners.

JOHN M. ROBINSON,

Counsel for Petitioners.

G. T. CARSWELL,

Counsel for Petitioners.